

FCC MAIL SECTION

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-283 ✓

In the Matter of

Amendment of Section 73.202(b), RM-8122
Table of Allotments,
FM Broadcast Stations.
(Hope and Fordyce, Arkansas)

**NOTICE OF PROPOSED RULE MAKING AND
ORDER TO SHOW CAUSE**

Adopted: November 18, 1992; Released: December 9, 1992

Comment Date: February 3, 1993

Reply Comment Date: February 18, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed on behalf of KdB, Inc. ("petitioner"), licensee of Station KXAR-FM, Channel 269A, Hope, Arkansas, seeking the substitution of Channel 269C2 for Channel 269A, and modification of its license to specify operation on the higher powered channel. In order to accommodate the request in conformity with the minimum distance separation requirements of the Commission's Rules, petitioner also requests the substitution of Channel 272A for Channel 269A at Fordyce, Arkansas, and modification of the license of Dallas Properties, Inc. for Station KQEW(FM). Petitioner adds that the Fordyce substitution would provide Station KQEW(FM) the opportunity to operate at maximum Class A facilities, an advantage which is not presently available to that community.

2. A staff engineering analysis reveals that Channel 269C2 can be substituted for Channel 269A at the petitioner's suggested site, located 2.6 kilometers (1.6 miles) west of the community,¹ consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules.² Additionally, Channel 272A can be substituted for Channel 269A at Fordyce, Arkansas, at the authorized site of Station KQEW(FM).³

3. We believe the public interest would be served by the proposal since it could enable Station KXAR-FM to expand its coverage area. Therefore, we will solicit comments on the proposal.

4. The petitioner's modification request at Hope is consistent with the provisions of Section 1.420(g) of the Commission's Rules. Therefore, we shall propose to modify the license for Station KXAR-FM without entertaining competing expressions of interest in the use of Channel 269C2 at that community, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. In addition, we shall direct an *Order to Show Cause* to the licensee of Station KQEW(FM) at Fordyce, Arkansas, as to why its license should not be modified to specify operation on Channel 272A in lieu of Channel 269A.

5. Commission policy requires that the licensee of Station KQEW(FM) be reimbursed for the reasonable costs incurred in changing frequencies. *See Circleville, OH*, 8 FCC 2d 159 (1976). Petitioner has stated its willingness to reimburse the licensee of Station KQEW(FM) for its reasonable costs associated with moving to Channel 272A.

6. In view of the above, the Commission believes it is appropriate to solicit comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

	Channel No.	
City	Present	Proposed
Hope, Arkansas	269A, 285A	269C2, 285A
Fordyce, Arkansas	269A	272A

7. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Dallas Properties, Inc., licensee of Station KQEW(FM), Channel 269A, Fordyce, Arkansas, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 272A in lieu of Channel 269A.

8. Pursuant to Section 1.87 of the Commission's Rules, Dallas Properties, Inc. may, not later than **February 3, 1993**, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Dallas Properties, Inc. to furnish additional information. If Dallas Properties, Inc. raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Dallas Properties, Inc. will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

9. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the licensee of Station KQEW(FM) as follows: Dallas Properties, Inc. 303

¹ Coordinates at the petitioner's suggested site for Channel 269C2 at Hope are 33-40-15 and 93-37-10.

² The proposal for Channel 269C2 at Hope conflicts with the presently licensed operation of Station KENA-FM on Channel 269A, Mena, Arkansas, at coordinates 34-34-23 and 94-14-55. However, Station KENA-FM has been modified to specify op-

eration on Channel 271C2 in MM Docket No. 89-290. *See* 7 FCC Rcd 5493 (1992). A copy of this *Order* will be served on Station KENA-FM.

³ Coordinates at the licensed site of Station KQEW(FM) are 33-48-17 and 92-26-07.

Spring Street, Fordyce, Arkansas 71742 and to Ouachita Communications, Inc., Radio Station KENA-FM, 1207 Texas, Mena, Arkansas 71953.

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before **February 3, 1993**, and reply comments on or before **February 18, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Anne Thomas Paxson, Esq.
Borsari & Paxson
2033 M Street, N.W.
Suite 630
Washington, D.C. 20036h)

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate

of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.